



Comptroller General
of the United States

Washington, D.C. 20548

5:11:00

Decision

Matter of: Palomar Grading and Paving, Inc.

File: B-255382

Date: February 7, 1994

William L. Bruckner, Esq., Corona & Balistreri, for the protester.

Jose Aguirre, Esq., Garrett L. Rensing, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's cancellation of an invitation for bids after bid opening on the basis that the only bid received was unreasonable as to price was proper where the protester's bid exceeded the government estimate by a significant amount and the protester fails to show that the government estimate is unreasonable.

DECISION

Palomar Grading and Paving, Inc. protests the cancellation of invitation for bids (IFB) No. N62474-93-B-7890, issued by the Department of the Navy for asphalt paving repairs. Palomar argues that the Navy improperly determined that Palomar's bid was unreasonably priced.

We deny the protest in part and dismiss it in part.

The Navy issued the IFB on August 12, 1993, for asphalt pavement repairs to the airfield and roads at San Nicolas Island Naval Air Weapons Station, California. The IFB contemplated the award of a firm, fixed-price, indefinite quantity contract, and provided estimated quantities for the work to be accomplished. Bidders were required to submit unit and extended prices based on the IFB estimates for 21 contract line items (CLIN) and 81 sub-CLINs.

Palomar's bid of \$13,547,450 was the only bid received by the bid opening date of September 17. The contracting officer reviewed Palomar's bid, and found that it exceeded the independent government estimate (IGE) by a substantial

amount.¹ Because of the asserted "gross" disparity between Palomar's bid price and the IGE, the contracting officer reviewed the IGE for reasonableness. According to the record, the IGE was based on the prices contained in a firm, fixed-price, indefinite quantity contract for similar paving work on the main base of the Naval Air Weapons Station at Point Mugu, which had been awarded on July 8, 1993. In calculating the IGE, the agency had adjusted the prices set forth for the work on the main base upwards to account for the increased requirements at San Nicolas Island, including the cost of barging the necessary equipment and materials from the mainland to the island.² The contracting officer concluded that the IGE was reasonable, and, by letter dated October 1 (received by Palomar on October 6), informed Palomar that its bid was rejected because its price was unreasonable. The agency subsequently canceled the solicitation.

Palomar protests the agency's determination to cancel the solicitation on the basis that Palomar's bid was unreasonably priced in comparison with the IGE, contending that the IGE was unreasonably low.

Once bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). Such a compelling reason exists when it is determined that all otherwise acceptable bids are at unreasonable prices. FAR § 14.404-1(c)(6). An agency's determination of price reasonableness involves the exercise of discretion on the part of the contracting officer, which our Office will not question unless it is unreasonable. U.S. Constructors, Inc.; Eletech, Inc., B-248329; B-248605, Aug. 19, 1992, 92-2 CPD ¶ 112. The FAR provides that the contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. See FAR §§ 14.407-2, 15.805-2. One of those techniques is a comparison of the prices received with the IGE. FAR § 15.805-2(e); L. White Constr. Co./Ansley-Sheppard Burgess Co., B-245916, Feb. 3, 1992, 92-1 CPD ¶ 138. A determination regarding price reasonableness may

¹The IGE and all of its supporting documentation were submitted to our Office under protective order. Because the IGE could affect the competition under the resolicitation, we will not reveal the IGE or the information contained in the supporting documentation.

²San Nicolas Island is located approximately 60 miles offshore.

be based on the IGE alone. Atkinson Dredging Co., B-250965; B-250967, Feb. 17, 1993, 93-1 CPD ¶ 153. In this regard, we have found a cancellation to be justified where the low responsive bid exceeded the government estimate by as little as 7.2 percent. Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233.

The protester argues that the IGE "is not reasonably based because it does not accurately consider the prevailing market costs for performing the work." Despite having access to the IGE and all of the IGE's supporting documentation under the protective order issued by our Office, Palomar has specifically challenged the IGE with regard to only one of the sub-CLINs, and has not made any specific arguments regarding the reasonableness of the agency's estimates for any of the other 80 sub-CLINs or any of the 21 CLINs.

With regard to the sub-CLIN challenged, which concerns the mobilization (including transportation) of construction equipment, housing and office space on San Nicolas Island, the protester has argued that the agency's estimate for that sub-CLIN is "wholly unreasonable and does not reflect current market conditions nor accurate or reliable prices which could be found from a commercial source such as Palomar." The protester, however, has failed to present any documentation in support of this claim, other than the disparity between its price for this sub-CLIN and the government estimate. For example, the protester has not provided any breakdown of its price calculation for this sub-CLIN, such as an estimated cost per barge trip, or any other explanation as to how its estimated cost is more "accurate or reliable" than the agency's. Nor has the protester argued or shown that the cost estimates on which the agency estimate for this sub-CLIN is based are unreasonable.

In any event, even if the government estimate for this sub-CLIN is adjusted upwards to the amount reflected in the protester's price schedule, the protester's total bid is still substantially higher than the IGE, with this remaining difference being more than sufficient to justify the agency's cancellation of the IFB for price unreasonableness. In view of this difference, and the protester's failure to specifically challenge any other aspect of the IGE, despite the protester's access to the IGE and all of its supporting documentation, we see no basis to object to the contracting officer's determination that Palomar's price was unreasonable. Id.

The protester argues for the first time in its comments on the agency report that the agency should have "open[ed] up a dialogue of negotiation" with Palomar in an attempt to

arrive at a price acceptable to the agency, instead of rejecting Palomar's bid. We dismiss this issue as untimely. Under our Bid Protest Regulations, a protest not based on an apparent solicitation impropriety must be filed within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1993). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the new allegations must independently satisfy our timeliness requirement; our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130. Palomar first became aware of the agency's rejection of its bid because the agency had determined Palomar's price unreasonable on October 6, when Palomar received the contracting officer's letter. Thus, Palomar had until October 21--10 working days later--to raise this protest issue. Its protest on this basis, raised for the first time in its December 21 comments on the agency report, is untimely and will not be considered. Id.

The protest is denied in part and dismissed in part.

Christine S. Melady
 for Robert P. Murphy
 Acting General Counsel